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## THE FRUITS OF PUBLIC REGULATION IN NEW YORK

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In his first message to the legislature, transmitted in 1907, Governor Hughes called attention to the fact that adequate control of public service corporations did not exist in the State of New York. He recommended that certain boards then in existence be abolished and that a new commission be created with enlarged powers, so that the interests of the public might be properly safeguarded. This recommendation was so widely and heartily endorsed throughout the state that the legislature passed a law to make effective the recommendations of Governor Hughes, with only six dissenting votes. Under this act, upon July 1, 1907, two public service commissions, each of five members, came into existence, one having jurisdiction in Greater New York, the other in the remainder of the state. The former, with which this article deals, succeeded to the functions within its area of the Railroad Commission, the Commission of Gas and Electricity, the Inspector of Gas Meters and the Rapid Transit Commission. In addition, many new powers were conferred which greatly extended the scope of public regulation. It has been asserted that no state board has greater powers or functions. A brief résumé will suffice to show the extensive authority enjoyed by these commissions:

### *Powers and Duties*

1. To examine into the general condition, capitalization, franchises and management of public service corporations; to compel the production of all records, documents and papers, and to summon witnesses.
2. To establish a uniform system of accounts and records and prescribe the form of annual, quarterly and monthly reports.
3. To order repairs or changes in corporate property, the

use of additional facilities, or the adoption of improved methods of operation, in order to secure safe and adequate service.

4. To test gas and electric meters, approve types of meters, and establish standards of quality for gas and electric service.

5. To fix just and reasonable rates to be charged by public service corporations, to prevent unjust discrimination, and to require two or more carriers to establish through routes and fix joint rates for through service.

6. To entertain complaints and after due hearing make such order as will remove the cause of complaint.

7. To grant or withhold the certificate needed by a public service corporation before it can begin new construction or exercise a franchise or right not already exercised.

8. To approve or disapprove the transfer of a franchise, or the making of a contract relating to a franchise.

9. To give or withhold permission for the issuing of corporate securities, or for the merger of existing companies; but not to permit the capitalization of any merger or franchise itself.

10. To grant or refuse permission for the transfer of stock in a public service corporation to a similar corporation, or for the acquisition of more than ten per cent of such stock by any corporation.

11. To grant, subject to the approval of the Board of Estimate and Apportionment, franchises for rapid transit railroads, whether subways, tunnels, elevated roads or continuations of trunk lines, such as the recent Pennsylvania Railroad extensions.

12. Subject to the approval of the same board, to lay out municipal rapid transit routes, prepare plans, obtain contractors, supervise construction, and secure operators for such routes, or under certain conditions to operate them directly.

All freight and passenger tariffs, including joint tariffs and the names of participating carriers, and all contracts or arrangements relating to transportation, must be filed with the Commission. The Commission has also required the rate schedules of all gas and electric companies to be filed.

#### *Utilities Controlled*

The jurisdiction of the Commission for the First District—that is over Greater New York—extends to all railroads and street

railroads lying wholly within the city, to such portion of railroads extending from one district to the other as lies within the First District, to all street railroads any portion of whose lines are within the city, to all common carriers so far as concerns operations exclusively within the city, to all gas and electric plants and to all the corporations or persons owning, leasing, operating or controlling these agencies.

The public utilities in Greater New York are gigantic. They serve not merely the 4,767,000 persons who live in the metropolis, but the many thousands from New Jersey, Connecticut and the North who come to the city daily. The gas companies supply more than one-fifth of the entire volume of gas produced in the United States, and the electric companies produce about one-thirteenth of the electricity produced in the United States for light and power. The transportation lines carry upwards of twice as many passengers as the steam railroads of the whole United States. One-third of this enormous traffic is carried during two hours in the morning and two hours in the evening, resulting in congestion and crowding which beggars description. Upon the average, each day of 1909-10 saw 340,000 passengers apply for transportation over and above the number carried upon the corresponding day the preceding year.

One would naturally infer that such a field would be the richest in the world. It is somewhat staggering to learn, therefore, that practically all of the surface lines in the very heart of this fertile field have been in the hands of receivers for about three years. When the Commission took office, all the lines in the boroughs of Manhattan and the Bronx were being operated by one company, the New York City Railway Company. The system was in a woeful state of disrepair, the result, in part at least, of decades of "high finance." Leases, bond and stock issues, and dividend guaranties had been piled on each other in a bewildering fashion. Dummy companies had been saddled with the responsibility of operating great systems. Funds which should have been used for maintenance were used to pay exorbitant rentals and dividends on fictitious capitalization. The system was tottering to inevitable bankruptcy, for it could no more continue than a pyramid can stand upon its apex. The real facts were

at first not generally known, but after the Commission turned on the light, the entire system went into the hands of receivers.

There are those who blame the Commission for this collapse and the subsequent decrease in stock exchange prices. But the Commission was no more responsible for the conditions it found than the doctor who examines a patient, reports the existence of a virulent disease and proceeds to prevent the repetition of an epidemic. The investigation paved the way for the rehabilitation of the system, which has been begun but not yet completed.

### *Improvement of Equipment*

Among the first orders adopted by the Commission was one requiring the companies in Manhattan and the Bronx to overhaul and repair all of their cars, and to make them clean, safe and efficient. The Commission has found that in Manhattan about twenty per cent of the cars were run into the barn for minor defects every day. Of the cars inspected one-fourth had flat wheels, one-half needed painting in whole or in part; one-half "rattled;" two-thirds had "gear noises;" one out of every six was operated without headlights, and one in every sixteen was "filthy." In many cases the companies had neglected so small an expenditure for public convenience as suitable signs showing the routes over which cars were operated and their destination. In compliance with the Commission's order, the rolling stock was put in first-class operating condition, resulting in greater comfort to the public, fewer breakdowns and greater economy in operation.

The conditions were not so bad in other boroughs, but from time to time other companies have been required by order or informal request to overhaul their cars, to improve the ventilation of certain types of cars, to maintain the proper temperature in cars, to install guard rails to prevent passengers entering or alighting on the wrong side, to put vestibules on cars for the protection of employees, to maintain shelters for waiting passengers at connecting points, to lay new or heavier rails, to lubricate curves and remove corrugations from the surface of rails in order to prevent noise and vibration, to double track certain of their lines, to lay or repair pavements between tracks, and to remove snow and ice from tracks and adjacent pavements.

*Safety Devices*

The investigation of the Commission developed the fact that practically all of the surface lines were being operated without adequate devices for saving life. During the year 1906-07, the companies incurred expenditures for injuries, damages and legal expenses amounting to over \$3,500,000 and killed scores of persons. Yet it was found that the cost of equipping all the lines with suitable wheel-guards and fenders would not exceed \$300,000. Believing that nothing is more important than the saving of human life, the Commission made extensive and scientific tests of life-saving devices under conditions closely resembling the various street conditions obtaining in New York. Ninety-two different devices were submitted and 1,801 separate tests were made, which showed that there were several types of wheel-guards and fenders far superior to most of the contrivances then in use in New York, and less expensive to maintain. Representatives from many cities in the United States, Canada and Europe attended.

Upon the completion of these tests, the various street car companies were heard. Many of them opposed the introduction of new and improved devices, but after thorough consideration all companies were ordered to equip their cars anew, and the work has just been completed for the entire city. Of course full results have not yet become apparent, for the cars of several large companies have only recently been equipped, but from the moment of introduction, the new devices reduced the number of fatal and serious accidents and decreased the amount paid for injuries, damages and claims. The annual number of persons killed on the surface lines in New York was reduced from 248 in 1908 to 161 in 1909, and the number during the first six months of 1910 has been 74, a reduction of 35 per cent last year and a further reduction of 8 per cent for the first half of this year. Many cases have been reported of persons picked up by these improved fenders and wheel-guards with little or no injury, under circumstances which would have meant certain death or serious injury under the old system of operation. One of the companies, the Union Railway Company, in violation of the orders of the Commission, operated a few cars without a proper wheel-guard and killed a man. His life doubtless would have been saved if the orders had been obeyed, yet

the judge dismissed the suit brought against the company on behalf of the people of the state on technical grounds.

All accidents occurring on any transportation line in Greater New York must be reported to the Commission. Immediate notice must be given by telephone to the office of the Commission, which is open between the hours of 8 a. m. and 11 p. m. to receive notices and complaints of any nature. The Commission investigates the causes of accidents and issues orders to prevent their recurrence.

Steam railroads have been required, whenever two or more employees are working on the tracks to station a man to warn them of the approach of trains; and through the Commission's recommendation there has been increased activity by railway and city officials in keeping trespassers off railroad tracks. An investigation and a suggestion to the operating company have caused a large amount of inflammable material to be removed from the subway. A system of locomotive boiler inspection is maintained, extending to all locomotives over which the Commission has jurisdiction. The plans and specifications of new cars are examined. An investigation of brakes on the elevated cars of the Brooklyn Rapid Transit Company resulted in the voluntary equipment by the company of all of its cars with an improved type of air brake. The Long Island Railroad Company has been ordered to equip its local trains with platform trapdoors and gates, or vestibule doors, and to keep them closed between stations. In addition, this company has been ordered to man its electric trains so as to have an employee at each car opening during station stops, and to raise certain station platforms to the level of car platforms.

Particular attention has been given to the dangers of grade crossings. In scores of cases the Commission has required more adequate planking of crossings, the installing of gates, maintaining of flagmen, erection of warning signs, operation of signal bells, placing of additional lights, or the building of overhead foot bridges. The New York Central has been required to station more flagmen at its dangerous Eleventh Avenue crossings and cease the operation of trains during certain hours. An investigation is now being made of about two hundred grade crossings in Brooklyn, Queens and Richmond.

*Improvements in Surface Transportation*

The transportation problem is more acute in New York than in any other city in the world. More passengers are carried per 100,000 of population and during a shorter period of time. As already indicated, there are two directions in which the Commission may improve conditions: (a) by requiring the existing companies to improve their service, and (b) by the construction of rapid transit lines either with city money or by private companies under the direction of the Commission. Both methods have been effectively utilized, and many orders have been issued directing various improvements. At certain hours in the day, it is physically impossible to operate a sufficient number of cars to give every one a seat, or even to prevent indecent crowding. But the general standard set by the Commission has been that during rush hours all lines shall be operated to their maximum capacity, and that at other times a sufficient number of cars shall be run to provide seats equal to the number of passengers in every interval of fifteen, twenty or thirty minutes, as observed at a point at or near the center of maximum loading. In certain cases a stricter rule has been enforced. Thus on certain lines the Commission has required a ten-minute schedule at night, holding it unreasonable, especially in winter, to require passengers to wait longer for a car, even though fewer cars would provide seats for everyone.

The result has been a marked improvement in service, although conditions are still far from ideal, and full relief can only be secured by the construction of new lines. An investigation of conditions in Manhattan prior to and after the issuance of these orders showed that upon only one line far out had the result been a decrease in the number of cars run, that even there the new service was adequate, and that upon all others the service had improved from eleven to fifty-seven per cent. Similar comparisons in the other boroughs would show similar results. It is worthy of note in this connection that improved service has not been followed always by a decrease in net earnings. In many instances the readjustment of the service resulted in better service, and also in larger financial returns.

It would hardly be possible to enumerate in detail the many improvements in service that have been ordered. A few may be cited to show their general character. At certain connecting points



companies have been required either to erect shelters or to keep a stationary car for the accommodation of waiting passengers. The ventilation, heating and lighting of stations and cars have been the subject of numerous orders; and in 1908 a general order was made, applying to all transportation lines in the city and prescribing the limits of temperature to be maintained in the cars. The giving and acceptance of transfers has often been required by the Commission in cases in which such action might legally be taken. Additional tracks have been ordered to facilitate the operation of cars. In scores of cases cars have been ordered run further toward the end of the line, for they were often improperly turned back, passengers being ordered to take "car ahead" or "next car," with much crowding and delay as the result.

#### *Service on Rapid Transit Lines*

The subway service has also been improved in many ways. A new signal system has been installed, upon the initiation of the Commission, to facilitate the operation of more trains by reducing the headway. The cars are being equipped with center side-doors to enable persons to enter and leave the cars with greater comfort and speed. The station platforms are being lengthened to permit ten-car trains to be operated instead of eight as at present. When all the changes are completed, which have been ordered by the Commission, it is expected that the carrying capacity of the subway will be increased from twenty to forty per cent. Already the headway between trains during rush hours has been reduced sixteen seconds, and during non-rush hours from three minutes to two and one-half minutes—equivalent to an increase in service of from thirteen to twenty per cent. A further reduction of eighteen seconds is expected when all the improvements have been completed.

Many minor improvements have also been made, such as additional stations, stairways, elevators, escalators, guard rails, station signs and car destination signs. The ten-candle-power lights furnished in the cars have been ordered replaced with sixteen-candle-power lights for the benefit of subway readers. Other improvements are under consideration.

Service has been improved on the elevated railroads in much the same manner as on the surface and subway lines. More cars

are being operated in longer trains. Through service has been substituted for stub-end operation. One company has installed an improved type of air brake on its cars. New stations have been erected and conveniences added at existing stations, such as additional platform space, better station signs, better coverings for stations, increased number of stairways, the widening of stairways, the installation of escalators, etc. The third tracking of certain lines, making possible better express service and extensions, are now being considered.

The steam railroads, particularly on Staten Island and Long Island, have been ordered to improve their service, to run their trains more regularly and to adjust their schedules to the schedules of other transportation lines at connecting points. For example, the Commission found it necessary to order that trains be scheduled to connect with the municipal ferry boats running between St. George and Manhattan, that stations and platforms should be properly lighted at numerous places, and that unnecessary noises and smoke nuisances from engines and shops be suppressed.

The vast majority of matters are handled without formal hearings and orders. If it can be adjusted by letter, telephone or personal consultation the case is closed. Thus in the three years ending July 1, 1910, the transportation bureau made about 3,000 service investigations, about one-fourth of which were based on complaints. The Commission issued nearly 150 orders as a result of investigations relating to service and general improvements. During 1908 transportation service in the city was increased by about 850,000 seat-miles, and in 1909 by more than 1,800,000 seat-miles, as was shown by observations made both before and after suggestions or orders for the improvement of service.

#### *Matters Relating to Gas and Electricity*

The activities of the Commission in the regulation of gas and electric service originate chiefly from complaints from consumers, and probably in no other field has the action of the Commission been more immediately and visibly helpful to the millions of people in Greater New York. The complaints have reference to inaccuracy of meters, poor quality or inadequate supply of gas or electricity, objectionable forms of contracts presented by the companies, dis-

criminations in charges, failure to compute charges according to the proper rule under the contract, failure to make connections with premises, failure to supply "breakdown service," improper discontinuance of supply, the requiring of unreasonable deposits by consumers, failure to extend gas mains or electric lines, too small service pipes or street mains, and many other matters of a similar nature.

Every gas meter is now tested before being put into use. Under the practice established by the former State Inspector of Gas Meters, meters had been stamped and approved without being tested, only a few samples from a lot of new meters being actually tested. Also the brass tag, indicating approval, was so attached that the meter might be changed, repaired, or completely overhauled without disturbing the evidence of approval; and a wrong method had been employed for computing the percentage of inaccuracy. All of these defects have been remedied and the work is now efficiently performed.

From July 1, 1907, to July 1, 1910, the Commission's inspectors tested and sealed 991,924 gas meters, more than three-fourths of all the gas meters in use in the City of New York. Of the remainder (less than 300,000) none have been in use untested more than seven years, for the Commission has ordered the removal of all meters that had been in use seven years or longer. Of course, the greater part of these tests were of new or removed meters which had to be tested before installation, but 15,563 were tested upon complaint of inaccuracy from consumers. In 1908, 7,346 were tested on complaint; in 1909, 4,068; the falling off being probably due largely to the increased general accuracy of meters caused by the large number of previous tests, the removal of all meters more than seven years old, the eighty-cent gas case decision giving the first actual reduction to many consumers, and the practice recently adopted by certain companies of making meter tests upon request of consumers without the necessity of application to the Commission. The Commission also tests electric meters on complaint.

The general attitude of consumers toward the gas and electric companies seems to have improved, a result doubtless due in large measure to the increased interest taken by the companies in complaints since the Commission began its investigations.

Aside from complaints with reference to meter tests, the Commission handled, through its bureau of gas and electricity, 961 complaints in the three years ending June 30, 1910. Each complaint is first taken up with the company affected, by telephone or by letter; and if necessary an inspector of the Commission is sent to investigate the facts. If, after correspondence on the subject, the matter is not adjusted to the satisfaction of the parties, an informal hearing is held before a Commissioner. His recommendation practically without exception has been accepted by both parties. The adjustment of these miscellaneous disputes goes far toward preventing similar disputes in the future; for when it appears that the methods of the company are at fault, it is advised to reform its practices.

Early in 1908, a general investigation was undertaken of all electric companies. One important matter taken up was the refusal of certain electric companies to give "breakdown" or auxiliary service to consumers having their own electric plants. One company had for two years refused to contract for this service, and the few old contracts still in force were expensive to consumers. The Commission considered this class of service reasonable and necessary, and finally a voluntary adjustment was made by which the company undertook to render the service at a cost much lower than that formerly charged, but, of course, somewhat in excess of the rates for regular consumers.

The Commission found the retail lighting contracts in use by the electric companies complicated and in many respects burdensome upon consumers. At its suggestion a much simpler form has been put in use, which can be terminated by the consumer on three days' notice instead of binding him for a year, as was often the case formerly. Five out of nine companies have also left out the provision for a guaranteed minimum payment per month.

The wholesale electric contracts were also complicated, various in form and in many cases apparently discriminatory or unfair, through the existence of riders or special contracts not known to all consumers. The Commission issued an order requiring all schedules of electric rates and forms of contracts to be filed with the Commission and posted for public inspection, and making illegal all discriminations, rebates and special rates. In many other respects, the practices of the companies have been remodeled to the benefit of the companies as well as the public.

The Commission found a great variety of electric meters in use, some of which were not satisfactory. After an investigation and report by an expert specially employed for the purpose, the Commission adopted an order prescribing certain specifications for all electric meters thereafter to be installed within the district. At the same time an order was adopted certifying certain types of meters as conforming to the specifications adopted. These were particular types of meters made by the various manufacturing companies; and additions have been made to the list of approved types of meters by amendatory orders from time to time. In October, 1909, the Commission adopted an order prescribing rules and regulations to be observed by the companies in testing their electric meters for accuracy and in making monthly reports of all such tests to the Commission. It is to be noted that the statute does not require, and the Commission has not yet required, that no electric meter should be put in use without being tested by the Commission's inspectors, but merely that no meter shall be installed whose type has not been approved by the Commission.

### *Gas and Electric Rates*

Just prior to the creation of the Public Service Commission, the rates for gas and electricity had been scrutinized by a legislative commission and a state board. As a result, the legal maximum for nearly all of Greater New York had been fixed at eighty cents per thousand cubic feet of gas and ten or twelve cents per kilowatt hour of electricity. The electric companies accepted the reduction without litigation, and so did certain of the gas companies, but the Consolidated Gas Company and its subsidiaries resisted the law, and when the Commission took office, an injunction suit was being tried in the federal court. The Commission actively defended the legality of the rate, carrying the case to the United States Supreme Court. A final decision was obtained in January, 1909, upholding the statute, and the consumers of gas were refunded their overpayments.

These reductions naturally made extensive rate investigations unnecessary, and only recently have any applications been made to the Commission for the reduction of gas or electric rates. Three cases have recently been begun—two relating to gas and electric rates in the Fifth Ward of Queens, where reduction had not been

made by the statute above referred to; and the other relating to the price of gas in a section of Brooklyn where the rate is higher than elsewhere.

Many minor matters affecting rates have been adjusted in a manner which practically amounts to a lowering of charges. The required re-establishment of "breakdown service" by the Manhattan electric companies has resulted in a reduction of expense to many office, shop, theatre and apartment buildings. Minimum charges and guarantees have been dropped by several companies. Fees for service connections have been held to be improper. Refunding on fast electric meters has been standardized. Gas meters must now be tested more frequently. Numerous complaints about overcharges have been adjusted by informal action.

#### *Street Car Fares and Transfers*

The number of formal complaints against the rates of common carriers has been much larger; and until a few months ago, the Commission could not institute a rate case on its own motion. The question of the proper fare to be charged to Coney Island—the great seaside pleasure resort—has been the one to attract most attention. In 1907, the legislature passed a bill reducing fares to Coney Island from ten cents to five cents. Governor Hughes vetoed this bill on the ground that the matter was one which ought to be investigated by the Public Service Commission before action was taken. Soon after two residents of Brooklyn filed complaints with the Commission alleging that the fare of ten cents charged by the Brooklyn Rapid Transit Company was excessive and unreasonable. The Commission caused an appraisal to be made of the property of the various lines; and after investigation and extended hearings, a decision was reached dismissing the complaints.

The same citizens who presented complaints against the Brooklyn Rapid Transit lines also complained of the rate charged by the Coney Island and Brooklyn Railroad Company, which operated surface lines by six different routes from various points in Manhattan, Brooklyn and Queens to Coney Island. At that time this company charged ten cents on Saturdays, Sundays and holidays, and five cents on other days. The complaints alleged that a ten-cent rate was unreasonable and that the fare should be uniformly five

cents. While investigation of the case was in progress, the company raised its rate to ten cents at all times. The Commission dismissed the complaints, finding that a fare of five cents on all days would not be sufficiently remunerative. One of the complainants promptly instituted proceedings against the new rate of ten cents, urging the restoration of the old rate of five cents on days other than Saturdays, Sundays and holidays. The case is now pending.

The surface lines in Manhattan and the Bronx had been charging five cents for transportation in each borough with a system of transfers that enabled a passenger to ride from any point in either borough to nearly any other point in the same borough for a single fare. This was one of the benefits of consolidation of the lines. In 1907 and 1908, with the approval of a judge of the federal court, this system was broken up into several separate and distinct systems, receivers being appointed for each. Transfers at junction points were abolished between the separate systems, and the routing of cars was greatly altered. Thus it came about that thousands of persons suddenly found it necessary to change cars frequently and pay ten or fifteen cents when for years they had been paying five cents for a through ride.

The Commission began proceedings to determine what action should be taken and took up the most pressing case first. It soon became obvious that the proper remedy was to compel the re-establishment of through routes and joint fares with a proper division of the fare between the company giving a transfer and the company accepting it. The Metropolitan lines and the Fifty-ninth Street line were ordered to exchange transfers, the former being allowed three and three-fourths cents and the Fifty-ninth Street line one and one-fourth cents out of every five-cent fare. The receivers took the case into court on the ground that the Commission had not been given power to order transfers and to divide the fare. To remove all doubt upon this point, the legislature last spring amended the law and specifically conferred the power to compel the establishment of joint fares by transfer from one street car line to another. An order was subsequently issued by the Commission requiring the establishment of through routes and transfers between the lines of the Metropolitan system and the Fifty-ninth Street line. At the time of this writing the date for compliance with the order had not been

reached. But the Commission now has power to deal with the question, and the whole subject will need to be carefully studied and rearranged. The present condition is unfair to the public, and perhaps the old was so greatly abused as not to be fair to the companies.

Several other cases have been decided. In one, the Commission required two companies to exchange transfers at certain points in Staten Island as apparently required by law. The company brought suit to prevent the enforcement of the order, the lower court upheld the order, and an appeal has been taken. In another, the complaint was dismissed because the receipts did not pay operating expenses. In other cases, reductions were secured while the complaint was pending. A company was ordered to cease the collection of excess fares between two points and excess fares on other lines were discontinued voluntarily.

### *Approval of Securities*

Since the Commission came into being, applications have been made for the approval of securities having a par value of nearly \$300,000,000. Of this amount, about \$80,000,000 have been authorized. Every application is subjected to a searching investigation into the condition of the company's finances, and often an appraisal of its physical property has been made. The purposes for which the securities are to be issued are carefully scrutinized to see that no charges are made to capital that should go to operating expenses.

The order of approval states the purposes for which the money may be expended, the rate at which the securities may be issued, the period within which any discounts, commissions and expenses of the issue shall be repaid and often the method of amortization. It usually provides also for periodic reports to the Commission, the audit of the accounts by employees of the Commission and public sale to the highest bidder, unless a certain price is realized at private sale.

In certain instances, the Commission has allowed considerable leeway in the purposes of expenditure, but in such cases has required the company to submit the audited vouchers for approval before the amounts are paid out of capital. If the issue is secured by mortgage, the mortgage must also be approved according to the statute, and



care is taken that the security offered shall be as good as the company is able to give.

Among the most important applications that have been made are those relating to the reorganization of the Third Avenue Railroad Company, which has been operated by a federal receiver about three years. The first application of the bondholders' committee called for the issuance of about \$64,500,000 in securities; and the second, for about \$55,000,000, the corresponding securities of the old company being about \$53,500,000, not including other debts to be paid. Both applications were denied, the principal reasons being, omitting legal questions and defects in evidence and procedure:

(1) The capitalization of franchises will not be allowed, directly or indirectly, except so far as permitted by statute.

(2) Overcapitalization leads to inferior service and unwarranted exactions. The people of New York have too vivid evidence upon this point to forget its importance.

(3) The mere fact of investment does not establish a perpetual value not only because a mistake in judgment may be made, but also because property may be allowed to deteriorate, because progress in the arts may make it obsolete, and because a change in economic conditions may decrease the use made of it by the public. It is a well-known fact, and was stated in evidence, that the physical property of the Third Avenue system was allowed to fall into disrepair. Certain lines are still operated by horses, certainly an obsolete method of transportation. Other lines have ceased to be of value, and their operation has practically been abandoned. To assert that because a company at one time put money into property which has become useless, wornout and obsolete, a successor company which purchases that property at foreclosure sale should be allowed to capitalize for the amount originally expended is so absurd as not to require further discussion. Investment may be evidence of the good intentions of the investor, but it is not an infallible standard of perpetual value. *The Commission believes the proposition to be sound that capitalization should have a direct relation to value.*

(4) The present value of the property, as shown by a careful appraisal, allowance being made for contractor's profit, engineering, administration, development expenses and other legitimate expenses, was several million dollars below the proposed cap-

italization. In arriving at this conclusion, the Commission adopted the principles (*a*) that the present value of property is not determined by the original cost, (*b*) that allowance must be made for appreciation and depreciation, (*c*) that its actual condition, its age, its adequacy, its fitness to the needs of the community are most important and fundamenal considerations, (*d*) that property that has ceased to exist, although originally a legitimate charge to capital, should not be capitalized in perpetuity, and (*e*) that charges for maintenance, replacements and supercessions are prior claims to dividends.

(5) The net earnings for any single year or series of years are not a proper basis for determining the capitalization of a company, particularly when the rates charged for the service rendered may be regulated by the state. An ordinary business corporation fixes its own charges; it is not subject to state regulation; but a public service corporation does not have such privilege. The fundamental factor in rate regulation is a fair return upon the value of the property. Hence, if a company issued stocks and bonds upon the basis of earnings for a given year or period, and if it were found that the rates then charged were too high and were reduced by the state, resulting in the reduction also of net earnings, the capitalization once justified by earnings would be no longer proper. This is illogical and unsound.

(6) The amount of capital represented by bonds should not be in excess of the amount upon which there is definite certainty that interest may be earned. It would obviously be unwise and useless to approve a plan which might easily mean another foreclosure and reorganization in a few years. This is the second time within ten years that the Third Avenue Company has been in the hands of a receiver. It is time that a conservative plan were adopted, and upon such sound principles that another cataclysm will not be necessary.

(7) The applicants admitted that the present earnings were not sufficient to pay interest and dividends upon the proposed issues, and the Commission found that the prospective earnings were so uncertain that approval should not be given.

The plans for the reorganization of the other systems have not yet been perfected and submitted. Nearly all of the companies

operating surface lines in Manhattan and the Bronx must be reorganized, and when this has been done upon a sound and conservative basis, the street railways will be in a position to serve the public better and offer to investors securities that represent actual property and definite prospect of continued earning power.

In another case, during the course of the investigation by the accountants of the Commission, it was found that items amounting to nearly \$1,500,000 had been improperly charged. The accounts were corrected before approval was given. The company, having a limited loan of certain property, was required to set aside annually a sinking fund to pay off the bonds within the period of the loan.

The position of the Commission upon certain other matters is shown by the decision in the application of the Long Acre Electric Company for permission to issue \$50,000,000 in bonds and \$10,000,000 in non-voting stock, the proceeds to be used to establish a competing electric plant in Manhattan. The Commission refused the application because:

(1) The company's title to the franchise was clouded, and the expenditure of such sums under uncertainty would be unwise.

(2) The amount of bonds of the new issue was very much too large as compared with the amount of voting stock.

(3) The construction contract did not adequately protect the interests of the company or of the public.

(4) The applicant did not prove that the existing companies were not properly conserving the public interest and convenience, and that it would be to the advantage of the community to have a new company authorized to enter the field.

(5) If a competing company were allowed to begin operation, it did not seem likely that it would continue to operate independently for any considerable period.

(6) Competition would cause inconvenience and expense to the public, would cause duplication of plant, would lead to waste, and ultimately be urged as a reason why rates should not be reduced to consumers.

(7) Practically all of the advantages claimed by the applicant as the probable results of competition can be secured through the powers of this Commission, and until it has been demonstrated that these are ineffective, it would be unwise to adopt a method which has proved to be ineffective in the past.

*Uniform Accounting*

The establishment of uniform and scientific accounting by public service corporations has long been recognized as necessary to the solution of public service problems. The former Board of Railroad Commissioners was unable to secure complete and accurate reports from companies because it lacked the power to prescribe a system of accounts and records. The Commission has the power and established some time ago complete accounting systems for railroad companies, street railroad companies, gas companies and electric companies. From these prescribed accounts the companies make up their reports to be filed with the Commission, which now show practically everything which the books themselves would show. The reports are carefully scrutinized before being made public.

The Commission has also standardized the traffic records kept by transportation companies, and the reports of the companies of their traffic operations have become of great assistance in regulating service. Certain companies formerly kept no adequate records; great diversity also existed. The Commission has introduced a new traffic account unit—the car-seat-mile—obtained by multiplying the number of miles traveled by the number of seats in the car. It is more exact and allows comparisons to be made that are of greater value than formerly compiled.

Within the limits of a brief paper, it is impossible to describe the excellent work that has been done by the various departments, such as the bureau of accounts and statistics, the bureau of franchises and the legal department. The compilation, analysis and publication of the financial and operating statistics of the public service corporations in the First District have proved of great benefit to companies, investors, officials and the public. The franchises of the various corporations have been classified, arranged, indexed and charted for the first time in the history of the state or city. When it is remembered that there have been incorporated about seven hundred railroads and street railroad companies whose proposed routes lie wholly or partly within the First District, and more than three hundred gas and electric companies, and that the local franchise rights have been derived from no less than forty different municipal corporations and political sub-divisions now consolidated in the

Greater City, one gets a glimpse of the time and effort required. This work has been of special value to the Commission in various cases, and particularly in connection with its decisions upon franchises submitted for approval, and in its efforts to have unused tracks removed from the surface of the streets and unused franchises surrendered. Suits for the annulment of franchises are now pending.

### *Rapid Transit*

The rapid transit construction work of the Commission, while not so varied as the functions of regulation, consumes about two-thirds of the annual appropriation, not including the cost of construction itself. When the Commission came into office, it found the "Interborough" subway approaching completion and contracts just let for the "Loop" connecting the Williamsburgh and Manhattan Bridges with City Hall Park. A study of the plans showed that important changes should be made, such as a reduction in grades, the provision of greater headroom to allow the operation of surface or suburban cars, and an increase of about twenty per cent in the line's capacity. These were made and the line is awaiting the completion of the terminal by the Department of Bridges. The construction cost of this Loop line will be about \$10,000,000.

The Rapid Transit Commission had prepared plans for an important subway in Brooklyn, the so-called Fourth Avenue route, to extend from the Manhattan terminal of the Manhattan Bridge, across the bridge, through streets to Fortieth Street, and thence by means of two separate branches to Fort Hamilton and Coney Island. The Commission reviewed the plans, made certain improvements similar to those made on the Loop lines, and in May, 1908, submitted contracts to the Board of Estimate and Apportionment for final approval, covering the route as far as Forty-third Street. Action on the matter was delayed for more than a year, but finally, in the fall of 1909, the Board of Estimate and Apportionment approved the contracts. The work is now under way and will be completed, it is expected, next fall. The cost will be about \$16,000,000.

The nearness to the constitutional debt limit (ten per cent of the assessed value of real estate) has prevented the construction of

other subways. Appreciating the necessity of an amendment to the constitution, the Commission repeatedly urged and finally secured an amendment by which city bonds devoted to self-sustaining enterprises, such as docks and subways, should not be included in the ten per cent to which the city's debt is limited. The amendment was passed by the legislature in 1908, approved by the succeeding legislature in 1909, and ratified by the people at the fall election in 1909.

In the meantime, the Commission was at work preparing a comprehensive scheme for rapid transit development, and contracts and plans for the most important lines. It decided to build a through route between Manhattan and the Bronx, to complete the Loop lines in Manhattan and Brooklyn, and to extend the Fourth Avenue line to Fort Hamilton and Coney Island. This big route, known as the Triborough system, will cost when completed about \$125,000,000. A considerable portion is now under construction, and bids are to be opened this month (October) for most of the remaining portions.

Negotiations have been conducted for some time, but have not been completed, relating to extensions of the Interborough system down Seventh Avenue, up Madison Avenue, in the Bronx and in Brooklyn. The company has also submitted propositions for adding express tracks to their elevated lines for constructing extensions and for the operation of the Steinway tunnel, which has been idle for several years. If all the plans now under consideration could be carried out under conditions that would protect the interests of the public, congestion of population would be relieved, transit conditions would be greatly improved, new areas would be opened for development and the city would have made up for the many years when nothing was done. Yet transit facilities would even then not be in excess of the demands. The city is growing at a rapid pace, and the problem is not only how to provide for transportation already necessary, but how to prevent the recurrence of indecent conditions and how to meet the demands of the immediate future. Rapid transit lines cannot be built in a day, and no line has yet been operated in advance of the needs of the community. In 1909-10, the local transportation lines carried over 130,000,000 more passengers than they carried in 1908-9. In three years this growth would exceed the capacity of the present subway, which seems to support the assertion made by some that a rapid transit line should be built every three to five years for some time to come.